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Supreme Court of the United States

OCTOBER TERM, 1948.

No. 502

IRA CHASE KOEHNE AND JOHN A. SAVAGE, *Petitioners*,

v.

W. BRUCE MATTHEWS, United States Marshal and CURTIS REID, Resident Superintendent, District of Columbia Jail, *Respondents*.

Petition for Writ of Certiorari to the United States Court of Appeals for the District of Columbia and Brief in Support Thereof.

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PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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PETITION FOR CERTIORARI.

To the Honorable, The Chief Justice of the United States, and The Associate Justices of The Supreme Court of The United States.

1. Your petitioners Ira Chase Koehne and John A. Savage, respectfully submit this, their joint and several petition for the issuance of the Writ of Habeas Corpus to reverse the judgment of the United States Court of Appeals for the District of Columbia (R. 8), which judgment wrongfully and unlawfully affirmed the judgment of the District Court of the United States for the District of Columbia

(R. 5) denying the Petition for Habeas Corpus (R. 1-5). Said judgments (R. 5 and 8) each materially violated the fundamental rights of petitioner Savage not to be deprived of his liberty and property except by due process of law, and to be invariably afforded the equal protection of the laws, and that he shall not be so deprived pursuant to any "judicial" suspension or neglect to duly employ any of the due and lawful privileges of the writ of habeas corpus, prohibited by Article 1, Sec. 9, cl. 2 of our Constitution; and that the subordinate Federal Courts shall not neglect to be guided by and conform to applicable decisions of this Honorable Court, hereinafter complained of as cause of the deprivation of the liberty of petitioner Savage, among the grave matters embraced in the following Questions Presented.

That should said judgments stand, they will doubtless be authority for similar deprivations menacing practically every realty owner in the District as well as encourage realty development just outside the District.

That said judgment of said Court of Appeals (R. 8) was duly subjected to a Petition for Rehearing (R. 9-23), which was denied on September 27, 1948, (R. 24); and the mandate in this cause was duly stayed through December 24th, 1948 (R. 24, 25, 26); and

By order of December 23, 1948 the Honorable Chief Justice of the United States duly extended the time for filing the Petition for Certiorari herein until on or before January 7, 1949.

STATEMENT OF CASE.

2. (A) Your petitioners show unto your honors that petitioner John A. Savage, being unlawfully restrained of his liberty within the District of Columbia, his co-petitioner, Ira Chase Koehne, long a member of the bar of this Court, joined in the Petition for the Writ of Habeas Corpus in the District Court of the United States for the District of Co-

lumbia, in behalf of and to preclude any handicap that may arise from said restraint, pursuant to Act of Congress.[1]

(B) That said petition duly invoked judicial investigation and determination, with due process of law, of said restraint of human liberty in this capital of our greatest liberty-loving nation. That said deprivation of liberty resulted from three criminal prosecutions of petitioner Savage, Numbered 24,734, -5 & 6, in the Municipal Court of the District of Columbia, purportedly charging claimed violations of license regulations relative to the use and construction inherent in a certain residence house in said District from the time of its construction prior to the purported enactment of said regulations and the passage of the Act of Congress purportedly authorizing said regulations, which construction having been induced by the issuance by officers of the District of Columbia of a building permit therefor, which warrants that such construction is lawful throughout the last day of its useful life; and which purported license regulations, when, as herein, applied to said prior built residence house greatly impairs the obligations of the contract implied from the issuance of said building permit inducing the investment of money and building effort of said residence house in accordance with said building permit; said impairment of obligations of contracts being in

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[1] STATUTES CITED AND INVOLVED.

1940 D. C. CODE, TITLE 16, SEC. 801:

"*Any person committed*, detained, confined, or restrained from his lawful liberty within the District, under any color or pretense whatever, *or any person in his or her behalf, may apply by petition to the District Court of the United States for the District of Columbia*, or any justice thereof, *for a writ of habeas corpus* to the end that the cause of such commitment, detainer, confinement, or restraint may be inquired into; *and the court or the justice applied to, if the facts set forth in the petition make a prima facie case, shall forthwith grant such writ*, directed to the officer or other person in whose custody or keeping the party so detained shall be, returnable forthwith before said court or justice."

violation of our constitution, whose Article 1, Sec. 10, cl. 1, denies such power to the States, and the Constitution not granting such power to the United States renders such power non-existent. 10th Amdt.

When compliance with said regulations was insisted upon by officers of the District of Columbia, petitioner Savage, believing that the expense of such compliance would be much less than that of a controversy thereover with the authorities, so he duly complied therewith, despite which he was prosecuted, resulting in his said deprivation of his liberty.

(C) That said license regulations, and their purported authorizing statute, even if otherwise lawful and constitutional when not applied to such prior constructed residence homes, the same are, when applied to such prior constructions, unconstitutional and ex post facto, in violation of Article 1, Sec. 9, cl. 3.

(D) The averments of the habeas corpus petition, being all undenied, this Court says "we must assume that the petitioner's allegations are true" (Near top (R. 16)). Consider the averments of Par. 8 (R. 4) and the exceptional lack of "fair trial spirit" of the license trial Court, as also disregard of the last clause of 6th Amdt. The averments of Par. 2 (R. 1, 2) of the three complex license trials consolidated into one trial and it seems to require much proof that such artificial complexity was not for the purpose, or did not have the effect, of further putting layman Savage in jeopardy for want of counsel. Supplementing Par. 8 (R. 4) with the fact upon which opinion (R. 7, 8) is significantly silent, that the Court writing opinion (R. 7, 8) fresh before such writing denied the petition of a lawyer for leave to file its accompanying amicus curiae brief on the sole question of the false evidence which wrongfully resulted in Mr. Savage's being deprived of his liberty. Such are among the later fact-development of the study of counsel, includ-

ing more specific later found statements in Re Par's. 3, 4, & 7 (R. 2, 3) and *Price* v. *Johnston*, 334 U. S. at 291 in No. 2 of brown paper cover; and of (R. 14, 15, 16) Par. 2 (a, 3 (,2 (a, 4) & 2 (a, 5) which disclose the material part of the pretended informations upon which unlawful informations petitioner was deprived most wrongfully and jurisdictionlessly of his liberty, and which were in violation of law Title 23, Sec. 101 of 1940 D. C. Code, requiring that "Prosecution * * * shall be conducted in the name of the District of Columbia * * *", which they pretendedly were—see 2nd & 3rd lines following "Per Curiam" (R. 7); but the fatal jurisdictionless facts were that the essential Informations were each in the name of the Corporation Counsel, who "* * * comes into Court and causes the Court to be informed, and complains that John A. Savage —" (R. 14); and bear in mind that such Corporation Counsel or an assistant "— in his proper person, comes into Court and causes the Court to be informed, and complains that John A. Savage * * *"

QUESTIONS PRESENTED.

1. The judgments of both Courts below in this cause be vacated because they did not apply but did suspend or not apply to the habeas corpus petition a privilege, or all available privileges, in force at the time of the adoption of our Constitution as well as provided by law, including Title 16, section 801 of the 1940 Code of the District of Columbia. (p. 3 supra)

2. The judgments of both Courts below in this cause be vacated because the informations are not in the name of the District of Columbia.

3. The judgments of both Courts below be reversed because petitioner Savage was not afforded allocution before sentence was imposed upon him.

4. The judgments of both Courts below be reversed because it is not clear that petitioner Savage was afforded a fair and impartial trial.

5. Each of the judgments below be reversed and the District Court directed to duly proceed to try the validity and constitutionality of the regulations and their authorizing statute, with the consideration and determination of whether, in any different situation such regulations may lawfully be applied in any respect to require any alteration or restriction in use or in structure or finish of any building constructed in the District of Columbia prior to time of the promulgation of the regulations.

6. That each of the judgments below be reversed and the District Court ordered by due process of law to duly proceed to consider and determine in the light of the facts the applicable will of the law in all respects to the rights of the parties; and that the same proceed in the light of the applicable decisions of this Court, and our Constitution and laws.

CONFLICTS.

That the decisions of the Courts below herein complained of are each in direct conflict with decisions of this Honorable Court, including in *Waley* v. *Johnston*, 316 U. S. 101, 104; *Heuse* v. *Mayo*, 324 U. S. 42, 45; *Williams* v. *Kaiser*, 323 U. S. 471, 473, 474; *Walker* v. *Johnston*, 312 U. S. 275, 286; *Price* v. *Johnston*, 334 U. S. at 291 of No. 2 in brown cover quoted from on p. 8 Infra.

WHEREFORE, your petitioners respectfully pray that a writ of Certiorari issue under the seal of this Honorable Court to the United States Court of Appeals for the District of Columbia commanding that Court to certify and send to this Court a full and complete transcript of the record and of the proceedings of the said Court of Appeals had in said cause, to the end that this case may be reviewed and determined by this Honorable Court as provided by the statutes of the United States; and that the judgment herein of said Court of Appeals be revised by this Honor-

able Court, and for such other and further relief as to this Court may seem proper.

IRA CHASE KOEHNE
JOHN A. SAVAGE

IRA CHASE KOEHNE,
ORILLE C. GAUDETTE,
Counsel for Petitioners for Certiorari.

UNITED STATES OF AMERICA, DISTRICT OF COLUMBIA, *ss:*

John A. Savage, being duly sworn deposes and says; I am a petitioner for Certiorari in the above action. I have read the foregoing petition and the factual averments of the same are true as I verily believe.

Sworn to and subscribed before me this 7th day of January 1949.

WILMA A. MILLER
Notary Public
(Seal) District of Columbia.

CERTIFICATE OF COUNSEL.

I hereby certify that I have examined the foregoing petition for a writ of certiorari; and in my considerate opinion such petition is well founded, and should be granted by this Honorable Court in furtherance of justice; and said petition is not presented for any purpose of delay.

IRA CHASE KOEHNE,
Counsellor at Law.

INVITATION TO GOVERNMENT.

Each of the Government officers acting herein for respondents is hereby invited in the public interest to consider—

(A) The applicability to this cause of the position of such officers taken in *Waley* v. *Johnston*, 316 U.S. 101, and

(B) The affordance of due process of law required in the taking of one's liberty seems to require the trial Courts investigation and a statement of the grounds upon which it dismissed the petition for habeas corpus, to not foreclose petitioner's right of amendment (see top R. 20).

Upon both such questions this Honorable Court affords definite light in *Price* v. *Johnston*, 334 U.S. at 291 in No. 2 of brown paper cover, that

> " • • • Whether petitioner does or does not have any new information is a matter unrevealed by anything before it or before the Circuit Court of Appeals. It is a matter which should be determined in the first instance by the District Court. And it is one on which petitioner is entitled to be heard either at a hearing or through an amendment or elaboration of his pleadings. Appellate Courts cannot make factual determinations which may be decisive of vital rights where the crucial facts have not been developed. Cf. *Kennedy* v. *Silas Mason Co.*, 334 U.S. 249. • • "

and at 276 in said report of *Price* v. *Johnston* this Court said—(here applied to the District Court dismissal)

> " • • • There is nothing whatever to indicate that the dismissal stemmed from the court's belief that the allegation was insufficient on its face or that it was obviously without merit."

Under the statute (p. 3 supra) dismissals without any hearing the petition averments must be taken as true, and petitioner put to his supporting evidence before dismissal becomes due process of law.

Hence, it may seem that, kindred to *Waley* v. *Johnston*, supra, due reversal and remand to the District Court ought to be had in order to afford such due process herein.

IRA CHASE KOEHNE
ORILLE C. GAUDETTE
Attorneys for Petitioners.

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BRIEF ON CERTIORARI.

The applicable statute appears at bottom of Petition p. 3. It confines the standard of judicial allowability of the petition for habeas corpus to the face of such petition. In fixing thus such standard the statute says "if the facts set forth in the petition" for habeas corpus make a prima facie case, "the Court or justice applied to" "shall forthwith grant the writ." Statute p. 3 supra.

The statute is of great weight due to its simple clarity. Compared to such great weight, that of a prima facie case is far less ponderous but more persuasive, simple and of easy understandability.

This is a mere initial preview. The main brief and weight of authority is in R. 11-23.

The granting of Certiorari here petitioned for will afford great benefit to many persons, especially in the District of

Columbia, where, by the application of later enacted regulations to prior constructed, and hence lawful structures, which licenses are enforced by criminal prosecutions.

In countries where the government owns at least all of the land, licenses of all types are of great prevalency.

In the United States, where the people own most of the land, it would be most disturbing in all respects if a practice would be permitted where license requirements may compel usually quite expensive changes in prior constructed buildings. Such practices would be very un-American and breed less and less certainty, and less public respect for government, and would seem to be most destructive of the public interest.

The granting of certiorari would be quite beneficial in the public interest and generally constructive.

Thanks for your interest.

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